SILVER BUCKLE MINES, INC.

IBLA 83-487 Decided January 7, 1985

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio in part. I MC 27492 through I MC 27501.

Set aside and remanded.

1. Mining Claims: Lands Subject to -- Patents of Public Lands: Effect

   Where lands were patented under a statute which authorized the granting of nonmineral lands only, the issuance of the patent generally constituted a conclusive determination by the United States of the nonmineral character of the land so patented, and the subsequent discovery of mineral values thereon does not operate to void the conveyance by the United States.

2. Acquired Lands -- Mining Claims: Lands Subject to

   Land acquired by the United States does not become public land by the mere process of its acquisition, and, in the absence of specific statutory direction to the contrary, is not open for location of mining claims under 30 U.S.C. § 22 (1982).

3. Estoppel -- Federal Employees and Officers: Authority to Bind Government

   Reliance upon erroneous advice provided by Federal employees cannot create rights not authorized by law.

4. Mining Claims: Generally -- Mining Claims: Lands Subject to -- Mining Claims: Withdrawn Land -- Withdrawals and Reservations: Effect of

   Where a lode mining claim is located partially on patented or withdrawn land, such a claim is not null and void ab initio to the extent of its inclusion of such lands. While the claim may not afford the claimant any rights whatever in the lands into which the claim

> is partially projected, the configuration of such a claim might, in the proper circumstances, invest the claimant with extralateral rights in other land beyond or adjacent to that land which is closed to mineral entry.

APPEARANCES: Edward J. Anson, Esq., Wallace, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Silver Buckle Mines, Inc., appeals from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated March 4, 1983, declaring portions of the Colleen Nos. 1 through 10 lode mining claims (I MC 27492 through I MC 27501) null and void ab initio in part. The Colleen claims Nos. 1 through 6 were located on October 5, 1947. The Colleen claims Nos. 7 through 10 were located on October 15, 1947. The BLM decision stated, in part:

> Patent No. 24998 was issued October 26, 1908, covering the NE 1/4, Section 2, Township 47 North, Range 4 East, Boise Meridian, Idaho. The United States reacquired this property on September 12, 1938 when the Warranty Deed was transferred to the U.S. Forest Service. Acquired lands are not open to mineral location, but are open to mineral leasing. The Colleen #1 thru #10 lode mining claims were located after part of the land was unavailable for mineral location. Therefore, those portions of the Colleen #1 thru #10 lode mining claims located in the NE 1/4 of Section 2, Township 47 North, Range 4 East, Boise Meridian, Idaho are declared null and void ab initio.

On appeal, appellant contends that, depending upon the nature of the patent issued, reserved minerals may be subject to appropriation by location under the general mining laws or may be subject to other disposal laws. Appellant states that the BLM decision made no finding as to the nature of the patent, concluding that:

> Until such time as the B.L.M. * * * produces such documentation necessary to establish the statutory authority by which the Patterson patent was granted, appellant respectfully submits that the B.L.M., on the basis of the past representations of its agents and employees, is estopped to deny that the Patterson patent reserved minerals under a reservation which allowed the minerals reserved to remain open to location.

Appellant also argues that, without regard to the patent issued in 1908, the land was nevertheless open to location by reason of its reacquisition by the United States in 1938. Appellant asserts that where the United States acquires land stating no specific purpose, it is assumed that the land is held for disposal under the general land laws, and that a mining location may be made under the general mining law. Appellant further contends that there is no evidence that the United States had a specific purpose for acquiring the land other than to dispose of it.

[1] Insofar as appellant's first argument is concerned, we note that the original patent issued to one Thomas Patterson pursuant to a public sale

under the Act of April 24, 1820, 3 Stat. 566, as amended. This Act, while not revoked, was, to a large extent, superseded by the Pre-emption Act of 1841, 5 Stat. 453. See generally, Central Pacific R.R. Co. v. Taylor, 11 L.D. 445, 447 (1890). Section 10 of that Act expressly provided that known mines could not be entered. Subsequently, section 5 of the original mining law of 1866, 14 Stat. 86, expressly provided that "in all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law." 30 U.S.C. § 21 (1982). Thus, assuming arguendo that the lands were then known to be mineral in character, they would not have been subject to purchase under the public sale act when the patent issued to Patterson in 1908.

However, issuance of a patent by the General Land Office pursuant to an entry under the nonmineral land laws, unless procured by fraud, represented a conclusive determination that the land was nonmineral in character. See, e.g., Burke v. Southern Pacific R.R. Co., 234 U.S. 669 (1914); Barden v. Northern Pacific Railroad Co., 154 U.S. 288 (1894). A subsequent discovery of mineral values on land so conveyed would not operate to void the conveyance or create a reservation of minerals to the United States. See Diane B. Katz, 48 IBLA 118 (1980).

Not only has appellant made no showing of any fraud in the procurement of this patent, the patent, itself, is immune from attack by strangers who had no interest in the land at the time the patent was issued and were not prejudiced thereby. See Burke v. Southern Pacific R.R. Co., supra at 692; Moise & Leon Berger, 82 IBLA 253, 255 (1984).

Appellant indulges in speculation as to the authority under which the patent was issued. The thrust of this discussion is apparently directed to an argument that it is possible that the patent failed to include a reservation required by the granting authority. Appellant notes that where a patent includes a reservation not authorized by statute the reservation is void and where it fails to include one mandated by statute, the reservation is given effect citing Swendig v. Washington Power Co., 265 U.S. 322 (1924). See also Burke v. Southern Pacific R.R. Co., supra. Appellant further contends that "a recitation in a patent as to the statutory authority for issuance of the patent is not controlling, if the patent was in fact issued pursuant to a different statute." Appellant cites no authority for this latter proposition.

In any event, appellant's speculation notwithstanding, it will be seen that there is no possible way in which a mineral reservation could have been inadvertently omitted from the Patterson patent. The reason for this is the fact that while the Patterson patent issued in October 26, 1908, the first statute authorizing issuance of a patent with a mineral reservation was the Act of March 3, 1909, 35 Stat. 844, 30 U.S.C. § 81 (1982), which provided for the reservation of coal deposits in certain lands classified as being valuable for coal. No mineral reservation could properly be applied to a patent issued prior to this date.

[2] With respect appellant's contention that when the land was reacquired it thereby become subject again to the operation of the mining laws, in the absence of an affirmative indication to the contrary, the law is not as appellant states. Indeed, the two cases cited by appellant, Rawson v. United States, 225 F.2d 855 (9th Cir. 1955), and Thompson v. United States,

308 F.2d 628 (9th Cir. 1962), far from supporting appellant's contention, actually undermine its legal analysis. Thus, the court in Thompson stated:

> In Rawson, this court held that there was no authority for a mineral location on lands which had been acquired by the United States for use in connection with an emergency relief project and in so holding, held that Title 30 U.S.C.A. § 22 must be read in the light of the entire enactment of which it was but a part, and that when so read, the section embraces land owned by the United States, but not all lands so owned. [Emphasis in original.] It is there held that it was only where the United States had indicated that the lands are held for disposal under the general land laws that a mineral location might be filed. [Emphasis added.]

Id. at 632. Thus, absent an affirmative indication that the land is held for disposal, acquired lands are not open to location of mining claims. See Maurice Duval, 68 IBLA 1 (1982).

The land at issue was reacquired in 1938 pursuant to both 16 U.S.C. § 569 (1982) and 16 U.S.C. § 555 (1982). The first statute relates to acquisition of lands by donation for the purpose of assuring "future timber supplies," while the second statute relates to acquisition of land for forest headquarters, ranger stations and similar sites.

It can clearly be seen that to allow mineral entry and private acquisition of lands obtained for forest headquarter sites would be totally inimical with the purposes of 16 U.S.C. § 555 (1982). Insofar as the General Donation Act (16 U.S.C. § 569 (1982)) is concerned, this was the precise Act examined in extenso by the court in Thompson v. United States, supra. The court clearly held that land so donated was not subject to the initiation of mining claims. The same conclusion must obtain herein.

[3] Appellant suggests that it was informed by employees of BLM in 1959 that the land was subject to location and that, in reliance thereon, it had thereafter maintained the claims. 1/ Regardless of what BLM employees might have told appellant, the law on this point is quite clear. While the courts have occasionally held that reliance on Governmental advice which prevents an individual from obtaining a right he might otherwise have acquired may be sufficient to estop the Government (see, e.g., United States v. Wharton, 514 F.2d 406 (9th Cir. 1975)), the Government cannot be estopped where an individual is attempting to acquire a right not authorized by law. See Lynn Keith, 53 IBLA 192, 198, 88 I.D. 369, 372-73 (1981), and cases cited. Since the lands involved herein were not, by statute, subject to mineral entry, advice to the contrary by a BLM employee could not change their status. Appellant's estoppel agreement must be rejected.

[4] We note that, apparently, the subject claims are only partially projected onto lands not subject to location. As we have recently stated:

1/ It should be pointed out that the claims had actually been located in 1947, 12 years earlier, and appellant admits that from 1951 through 1959 it held a prospecting permit, issued by BLM, for this land.

> It has long been held that where a lode location is based upon a discovery of a mineral deposit on land which is open to mineral entry, the mining claimant may extend or project the claim boundaries onto adjacent patented, withdrawn or acquired land in order to configure the claim boundaries so as to obtain, in appropriate circumstances, the extralateral rights to the deposit. Therefore, this Board has held in a number of recent opinions that BLM should not declare null and void those portions of lode claims which extend or are projected onto lands not subject to mineral entry without a factual determination that the apex of the lode purportedly discovered is not situated within the available portion of the claim. Such a determination may only be made within the context of a contest proceeding conducted in accordance with the rules governing due process. Marvin F. Johnston, 81 IBLA 295 (1984); Marilyn Dutton Hansen, 79 IBLA 214 (1984); Santa Fe Mining, Inc., 79 IBLA 48 (1984); Zula C. Brinkerhoff, 75 IBLA 179 (1983); and cases cited therein.

Moise & Leon Berger, supra at 255. Thus, the State Office was in error to the extent that it held that the lode claims which were partially within and partially outside of the subject lands were null and void ab initio. Appellant, however, is cautioned that since the land acquired in 1938 is not open to mineral location, it has acquired no right to either the surface or the minerals found therein. See Marilyn Dutton Hansen, 79 IBLA 214 (1984).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is set aside and the case files are remanded.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge